



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU
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ARLINGTON, VA 22204

09 AUG 2004

NGB-ARE

MEMORANDUM FOR State Environmental Program Managers

SUBJECT: Additional Guidance for National Environmental Policy Act Documentation

1. References:

- a. National Environmental Policy Act (NEPA) of 1969.
- b. Army National Guard Real Estate Manual for Federal Property, Jul 98.
- c. Department of Defense (DOD), The 1999 American Indian and Alaska Native Policy.
- d. Environmental Analysis of Army Actions (32 CFR 651), 29 Mar 02.
- e. The NGB NEPA Handbook, Mar 02.
- f. National Historic Preservation Act (NHPA, 16 U.S.C. 470a-w).
- g. Advisory Council on Historic Preservation (ACHP) Regulations, subject: Protection of Historic Properties (36 CFR 800).
- h. DA PAM 200-4, Appendix F
- i. DOD Annotated Policy dated 27 OCT 99,
- j. DOD Instruction 4715.3 and Executive Order 13175

2. The 32 CFR 651 was revised on 29 Mar 02. The NGB NEPA Handbook, which was revised in Mar 02, provides current guidance for NEPA policies and procedures detailed in 32 CFR 651. The intent of this memorandum is to clarify significant changes and procedures in the above documents and the process of evaluating proposed Federal actions.

NGB-ARE

SUBJECT: Additional Guidance for National Environmental Policy Act Documentation

3. The proponent of a proposed action will consider NEPA requirements early in the decision-making process. The proponent is the unit, element, or organization that is responsible for initiating and/or carrying out the proposed action, requesting the implementation of the proposed action, receiving the greatest benefit, or having the most influence over the proposed action.

a. The responsibility of the proponent includes describing the proposed action, outlining the purpose and need, evaluating reasonable alternatives for accomplishing the action based on specific screening criteria, and creating a schedule for project implementation. The proponent will provide resources for document preparation, related studies, public involvement, and any mitigation that may be required for implementation of the proposed action. The proponent will identify resources early in the planning and programming process to ensure that the NEPA process will not be adversely affected.

b. The State's Environmental Program Manager (EPM), although not usually the proponent, will provide technical expertise for the preparation and staffing of the necessary environmental documentation.

4. The Office of the Director of Environmental Programs for the Department of the Army no longer provides funding for non-environmental NEPA documentation. The Environmental Programs Division (ARE) at the National Guard Bureau (NGB) has identified this shortfall and has worked to ensure that proponent divisions at NGB such as the Installations Division (ARI) and The Training Division (ART) have budgeted for NEPA documents in support of their proponent actions.

5. The NEPA requires consideration of the environmental consequences of any proposed Federal action and where applicable, involvement of the public in the decision-making process.

a. The NEPA process may involve three types (or levels) of analysis depending on the potential for significant impact. They are:

(1) Environmental Checklist—no significant impact.

(2) Environmental Assessment (EA)—potential significant impact.

(3) Environmental Impact Statement (EIS) —expected significant impact.

b. Typical ARNG actions that require environmental analysis include, but are not limited to:

NGB-ARE

SUBJECT: Additional Guidance for National Environmental Policy Act Documentation

- (1) Construction.
- (2) Unprecedented (in location or type) training events.
- (3) Innovative Readiness Training (IRT).
- (4) Community service projects.
- (5) Major equipment fielding or relocation.
- (6) Restationing.
- (7) Reorganization.
- (8) Real property and facility management (such as master plans).
- (9) Environmental programs such as:
 - (a) Integrated Natural Resources Management Plans (INRMPs).
 - (b) Integrated Cultural Resources Management Plans (ICRMPs).
 - (c) Integrated Pest Management Plans (IPMPs).

c. Actions that occur on any non-ARNG controlled property (e.g., not federally licensed, leased, or fee simple ownership) require the signature of the landowner on the NEPA document.

d. After completion of the environmental analysis, a decision document may be signed. This decision document may be a:

- (1) Record of Environmental Consideration (REC) (enclosed).
- (2) Finding of No Significant Impact (FNSI).
- (3) Record of Decision (ROD).

6. Proponents should give special attention to the following areas because of changes in interpretation, emphasis, or regulatory requirements:

a. Categorical Exclusions (CXs). Categorical Exclusions are categories of actions with no individual or cumulative effect on the human or natural environment and for which neither an EA nor an EIS is required.

NGB-ARE

SUBJECT: Additional Guidance for National Environmental Policy Act Documentation

There are 52 CXs listed in Appendix B of 32 CFR 651. The use of a CX is intended to reduce paperwork and eliminate delays in the initiation and completion of proposed actions that have no significant impact. The first step in determining whether a CX might be applicable for a proposed action is to review the screening criteria listed in 32 CFR 651. All screening criteria must be met for the proposed action to be categorically excluded. If any of the criteria are not satisfied, the action requires an EA or EIS to assess potential effects. A REC should cite the paragraph of the CX followed by the written description of the CX.

b. Finding of No Significant Impact (FNSI). Changes in 32 CFR 651 specify that a draft FNSI along with the final EA must be made available for public review before it can be approved. If no substantive comments are received, the FNSI will be signed, and the action can be implemented.

c. Mitigation Measures. Proponents and EPMs should carefully consider the use of any mitigation measures. They should only be used as required to reduce an impact to less than significant. Any required mitigation measure must be programmed and budgeted by the proponent. Appropriate language discussing funding of the mitigation measures should be included in the document and FNSI or ROD. As an example:

"The National Guard Bureau and [STATE] National Guard affirm their commitment to implement the _____ for _____ Training Area. Implementation of the project and its mitigation measures is dependent on funding. The XXARNG and the National Guard Bureau XXX Division(s) will ensure that adequate funds are requested in future years budgets to achieve goals and objectives set forth in the EA."

d. Environmentally Sensitive Resources. The screening criteria listed in 32 CFR 651 will not allow the use of a CX if the proposed action will adversely affect "environmentally sensitive" resources (e.g., wetlands, floodplains, prime farmland, etc.). This constraint does not apply if the impact has been resolved through another environmental process (e.g., Coastal Zone Management Act, NHPA, Clean Water Act, etc.) and a valid CX is applicable to the proposed action (see 32 CFR 651, §651.29(e)).

e. Innovative Readiness Training (IRT). The State ARNG accomplishes IRT projects to meet their military training requirements while providing support and services to non-DOD organizations. The IRT projects must be reviewed under NEPA and the documentation is submitted to NGB Operations Division (NGB-ARO). More information on this submittal process can be found in the NGB NEPA Handbook. Projects may be submitted but will be resourced by NGB-ARO only after the State EPM submits any required permits for the project to NGB. Section 3.8 of the NGB NEPA Handbook provides additional information on IRT NEPA requirements.

NGB-ARE

SUBJECT: Additional Guidance for National Environmental Policy Act Documentation

f. Native American Consultation.

(1) DA and DOD regulations and policy require consultation with Native Americans during the NEPA analysis process. In order to comply with these requirements, states must ensure that every federally recognized tribe with a cultural affiliation with the proposed action is invited to consult. Consultation can be initiated using any established protocol agreed to between the state and the tribes (MOU, etc.). In the absence of any established protocol, states will ensure that tribes are included through use of the consultation process outlined below:

(a) Initial NEPA consultation through a certified letter, signed by the TAG or Chief of Staff, which presents the proposed action. This should occur prior to initiation of the draft document.

(b) Transmittal of a certified cover letter inviting consultation along with the draft NEPA document. Publication of the Notice of Availability in at least one local paper of general circulation.

(c) Transmittal of a certified cover letter and Final NEPA document. Publication of the Notice of Availability in at least one local paper of general circulation.

(d) Copies of all communications and distribution lists as required along with any responses from the tribe should appear in the Final NEPA document.

(2) Those states who have an established protocol for consultation and those who have initiated consultation in the manner listed above, will make a determination as to whether consultation is required for each project being analyzed by NEPA.

(a) If a State ARNG determines that consultation is not required, then cite the relevant policies and provide the rationale for the decision in the NEPA document. For example:

The [STATE] ARNG has considered the Annotated DOD Policy on American Indians and Alaska Natives (dated 27 October 1999), EO 13175, and guidance in DA PAM 200-4 Appendix F. The [STATE] ARNG concludes that the action is of a type that would not affect Native American concerns because [PROVIDE REASON(S)]

(b) If a State ARNG determines that consultation is required and has conducted such consultation, then cite the relevant policies and provide the rationale for the decision in the NEPA document. For example:

NGB-ARE

SUBJECT: Additional Guidance for National Environmental Policy Act Documentation

The [STATE] ARNG has considered the Annotated DOD Policy on American Indians and Alaska Natives (dated 27 October 1999), EO 13175, AR 200-4 and guidance in DA PAM 200-4 Appendix F. The following tribes have been identified as having potential concerns:

[LIST OF POTENTIALLY INTERESTED TRIBES]

This list is based on recent tribal consultations on the Integrated Cultural Resources Management Plan dated [DATE OF LAST ICRMP] and other recent communications regarding the present actions. In addition, the following tribes have indicated that the project location is outside their area of interest:

[LIST OF TRIBES THAT ARE NOT CONSIDERED INTERESTED]

Consultation followed established protocols based on MOU's [IF ANY, OR WHATEVER OTHER PROTOCOL; CITE WITH DATE]. Consultations with the remaining tribes followed the default protocols provided in the NGB-ARE Policy Memo dated _____.

g. Section 106, National Historic Preservation Act (NHPA). The NHPA, Section 106, requires that "Any agency with direct or indirect jurisdiction over a proposed Federal or Federally assisted undertaking shall...take into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for the National Register of Historic Places [NRHP]." To comply with Section 106, consultation with State Historic Preservation Officers (SHPOs) is critical. The Section 106 consultation process must be completed prior to NGB approval of the expenditure of any Federal funds for a proposed project. If applicable, ensure that this consultation process is completed early in the NEPA timeline. More information on compliance with Section 106 of the NHPA can be found in the NGB NEPA Handbook.

h. Document Submittal. The NGB NEPA Handbook describes the requirements for submittal of draft and final draft documents in an editable electronic format for NGB review. The electronic documents provide an effective format for staffing and they will be retained on the Guard Knowledge Online web site. Their postings provide a resource for document preparation for similar ARNG actions in other States. With each State ARNG having accessibility to Geographic Information Systems (GIS), all possible maps and related documents should be provided in a compatible GIS format using ArcView or ArcInfo. In addition to requirements outlined above and in the NGB NEPA Handbook, NGB-ARE-C requires two paper copies of all draft and final draft documents submitted for review.

i. Administrative Record. The proponent shall create and maintain an administrative record for at least six years after the NEPA process is completed. The Administrative Record will be maintained at the installation's environmental office. It should not be

NGB-ARE

SUBJECT: Additional Guidance for National Environmental Policy Act Documentation

submitted to NGB-ARE-C for review. A complete Administrative Record should be indexed per Appendix X of the NGB NEPA Handbook and should include project-related information within the possession of the proponent and/or lead agency (and any contractor). The record should identify any reference materials used in preparing the document but available only from outside sources. Communications of all types are typically included, along with any public outreach materials. Data sources that should be part of an Administrative Record include maps, drawings, studies, reports, documents, appraisals, special data compilations, modeling results, correspondence from subject matter experts, or other types of written information that were used during the environmental analysis and decision-making process. All references that are cited in the NEPA document should be traceable to the administrative record.

j. Public Review. Public review of NEPA documents must be accomplished in accordance with Sections 9.1.3 and 9.1.6 of the NGB NEPA Handbook. In addition to the traditional hard copy review, this can be accomplished in an electronic format. Ensure that the facility where the document is available for review has the equipment necessary for public viewing of the electronic media. Other public access can be made through the appropriate State ARNG Internet web site. Ensure that all display ads include the web address where the electronic copy is stored.

k. Public Affairs (PA). The integration of a comprehensive PA plan into the NEPA process is extremely important. Planners must work closely with their Public Affairs Officer (PAO) to ensure that an adequate PA plan is developed. The earlier the public is involved in the planning process, the more likely the action will succeed. Public Affairs is the first step in the planning process when you are considering an action that will require NEPA analysis. It is imperative that the State EPM and State PAO coordinate early in the process to program necessary funds to support PA requirements for EAs and EISs.

l. Real Property Actions.

(1) It is Army policy to prepare an Environmental Baseline Survey (EBS) to determine the environmental conditions of properties being considered for acquisition, outgrants, and disposals. Reassignments within DA, easements, licenses, and permits do not require an EBS. However, an EBS may be performed if desired by the Army or where extraordinary circumstances exist. The EBS is used to identify the potential environmental contamination liabilities associated with the real property transaction. Information provided by the EBS will be integrated and documented by reference or actual text in the appropriate NEPA document prepared in accordance with 32 CFR 651. Therefore, it is necessary to prepare the EBS before the NEPA document proposing the real property action is prepared, so the decision maker can take into consideration the environmental condition of the property when deciding whether or not

NGB-ARE

SUBJECT: Additional Guidance for National Environmental Policy Act Documentation

to implement the proposed action. Requirements for an EBS are set forth in the NGB-ARE Environmental Baseline Survey (EBS) Standard Operating Procedures, February 1999. (See AR 200-1, Subsection 15-6(b).)

(2) Real property acquisitions are environmental challenges for the ARNG. The ARNG continues to acquire and dispose of real property. Each real property action involving the use of Federal funds requires a NEPA analysis. Close coordination between NGB and the State ARNG (the action proponent) is essential to ensure the NEPA analysis is properly timed and sequenced in the acquisition/disposal process. The State ARNG must obtain NGB-ARI approval for all proposed Federally funded property acquisitions

(3) In order to complete the decision process, and following completion of an EBS, if necessary, the ARNG Real Estate Manual (reference 2.d) states:

"If the ARNG use is consistent with existing land use that has been environmentally assessed, then a CX is likely available, if not, then an EA or EIS must be accomplished. In the latter case, NEPA documentation should commence upon the Installation Commander's informal agreement to proceed with a Report of Availability."

(4) If a host installation grants a real estate interest to the ARNG by issuing a license, then the host installation is the NEPA proponent. On the other hand, if an ARNG Federal installation, as the host, issues a license, then they are taking the Federal action and must complete the necessary NEPA analysis.

7. Noise Management.

a. Each State and Territory is required to implement a state-wide Environmental Noise Management Plan (ENMP). An ENMP includes a noise zone overlay for appropriate activities within a state and a series of Standard Operating Procedures (SOPs) related to noise management. The ENMP doesn't create new noise generating activities; it is a program for managing current noise activities and establishing a baseline for siting future activities that may impact noise sensitive areas on and off the installation. Since there are no potentially significant environmental impacts from implementation of an ENMP, NEPA documentation is not required.

b. Potential noise impacts from proposed ARNG activities are analyzed on a case-by-case basis, in project specific NEPA documents (Checklist, EA, EIS). The noise sections of these project specific analyses should reference the installation's ENMP.

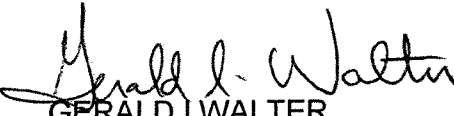
NGB-ARE

SUBJECT: Additional Guidance for National Environmental Policy Act Documentation

8. The Army Campaign Plan (ACP). The ACP is a strategy for achieving transformation of the Army into the Future Force. It includes actions such as modularizing Division and Brigade structures and resetting the force. NGB-ARE intends to craft a programmatic Environmental Assessment in order to ensure as many known actions as possible are identified and to provide the states with documentation they can use as a basis for any future NEPA requirements associated with the ACP.

9. The point of contact for this action is MAJ Amy Calder, NEPA Team Leader, at DSN 327-7971 or 703-607-7971.

Encl
As


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CF:

Each State Inspector General
Each State Chief of Staff
Each State Facilities Management Officer
Each State Aviation Officer
Each State Director of Logistics
Each State Director of Operations
Each State Environmental Office
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